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THE EQUINOX GROUP, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SEAN BARNES, individually, and on behalf of
all others similarly situated,

Plaintiffs,

v.

THE EQUINOX GROUP, INC., and DOES 1
through 100, inclusive,

Defendants.

Case No. CV-10-03586 LB

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER REGARDING
DISCLOSURE OF CONFIDENTIAL
DOCUMENTS**

Defendant the Equinox Group, Inc. ("Defendant") and Plaintiff Sean Barnes ("Plaintiff")
("collectively referred to here as "the Parties") stipulate and agree to the following:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of
confidential, proprietary, or private information for which special protection from public
disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
Accordingly, the parties hereby stipulate to and petition the Court to enter the following
Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
protections on all disclosures or responses to discovery and that the protection it affords extends
only to the limited information or items that are entitled under the applicable legal principles to
treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that

1 this Stipulated Protective Order creates no entitlement to file confidential information under seal;
2 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
3 that will be applied when a party seeks permission from the Court to file material under seal.

4 2. DEFINITIONS

5 2.1 Party: any party to this action, including all of its officers, directors, employees,
6 consultants, retained experts, and outside counsel (and their support staff).

7 2.2 Disclosure or Discovery Material: all items or information, regardless of the
8 medium or manner generated, stored, or maintained (including, among other things, testimony,
9 transcripts, or tangible things) that are produced or generated in disclosures or responses to
10 discovery in this matter.

11 2.3 "Confidential" Information or Items: information (regardless of how generated,
12 stored, or maintained) or tangible things that qualify for protection under federal or state law,
13 including information the Producing Party may contend contains confidential business or
14 technical information, proprietary information, trade secrets, or other information considered by
15 the Producing Party in good faith to be confidential.

16 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
19 Material in this action.

20 2.6. Designating Party: a Party or non-party that designates information or items that it
21 produces in disclosures or in responses to discovery as "Confidential."

22 2.7 Protected Material: any Disclosure or Discovery Material that is designated as
23 "Confidential."

24 2.8. Outside Counsel: attorneys who are not employees of a Party but who are retained
25 to represent or advise a Party in this action.

26 2.9 House Counsel: attorneys who are employees of a Party.

27 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
28 support staffs).

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material
3 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
4 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
5 parties or counsel to or in court or in other settings that might reveal Protected Material.

6 4. DURATION

7 Even after the termination of this litigation, the confidentiality obligations imposed by this
8 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
9 otherwise directs. In addition, the Parties agree to be bound by this agreement pending approval
10 of the court.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
13 or non-party who designates information or items for protection under this Order must take care
14 to limit any such designation to specific material that qualifies under the appropriate standards. A
15 Designating Party must take care to designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify — so that other portions of the
17 material, documents, items, or communications for which protection is not warranted are not
18 included within this Order.

19 Mass, indiscriminate, or routine designations are prohibited. Designations that are shown
20 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
21 encumber or retard the case development process, or to impose unnecessary expenses and
22 burdens on other parties), expose the Designating Party to sanctions.

23 If it comes to a Party's or a non-party's attention that information or items that it
24 designated for protection do not qualify for protection, that Party or non-party must promptly
25 notify all other parties that it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
27 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
28 material that qualifies for protection under this Order must be so designated before the material is

1 disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) For information in documentary form (apart from transcripts of depositions
4 or other pretrial or trial proceedings), that the Producing Party affix the legend
5 "CONFIDENTIAL" on the face of each page that contains protected material. If only a portion
6 or portions of the material on a page qualifies for protection, the Producing Party also must
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and
8 must specify, for each portion, that the information is "CONFIDENTIAL."

9 (b) For testimony given in deposition or in other pretrial or trial proceedings,
10 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
11 close of the deposition, hearing, or other proceeding, all protected testimony. When it is
12 impractical to identify separately each portion of testimony that is entitled to protection, and when
13 it appears that substantial portions of the testimony may qualify for protection, the Party or non-
14 party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition
15 or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the
16 testimony as to which protection is sought. Only those portions of the testimony that are
17 appropriately designated for protection within the 20 days shall be covered by the provisions of
18 this Stipulated Protective Order.

19 Transcript pages containing Protected Material must be separately bound by the court
20 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as
21 instructed by the Party or non-party offering or sponsoring the witness or presenting the
22 testimony.

23 (c) For information produced in some form other than documentary, and for
24 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
25 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
26 If only portions of the information or item warrant protection, the Producing Party, to the extent
27 practicable, shall identify the protected portions as "Confidential."

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items as “Confidential” does not, standing alone, waive the
3 Designating Party’s right to secure protection under this Order for such material. If material is
4 appropriately designated as “Confidential” after the material was initially produced, the
5 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
6 that the material is treated in accordance with the provisions of this Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
9 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
10 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
11 waive its right to challenge a confidentiality designation by electing not to do so promptly after
12 the original designation is disclosed.

13 6.2 Meet and Confer. A Party who elects to initiate a challenge to a Designating
14 Party’s confidentiality designation must do so in good faith and must begin the process by
15 conferring directly with counsel for the Designating Party. In conferring, the challenging Party
16 must explain the basis for its belief that the confidentiality designation was not proper and must
17 give the Designating Party an opportunity to review the designated material, to reconsider the
18 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
19 designation. A challenging Party may proceed to the next stage of the challenge process only if it
20 has engaged in this meet-and-confer process first.

21 6.3 Judicial Intervention. A Party who wishes to challenge a confidentiality
22 designation after considering the justification offered by the Designating Party may file and serve
23 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
24 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
25 such motion must be accompanied by a competent declaration that affirms that the movant has
26 complied with the meet-and-confer requirements imposed in the preceding paragraph and that
27 sets forth with specificity the justification for the confidentiality designation that was given by the
28 Designating Party in the meet-and-confer dialogue.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
 2 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
 3 question the level of protection to which it is entitled under the Producing Party's designation.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 6 produced by another Party or by a non-party in connection with this case only for prosecuting,
 7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 8 to the categories of persons and under the conditions described in this Order. When the litigation
 9 has been terminated, a Receiving Party must comply with the provisions of section 11, below
 10 (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and
 12 in a secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 14 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 15 information or item designated CONFIDENTIAL only to:

16 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 17 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 18 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
 19 hereto as Exhibit A;

20 (b) the Court and its personnel;

21 (c) court reporters, their staffs, and professional vendors to whom disclosure is
 22 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
 23 Protective Order" (Exhibit A);

24 (d) during their depositions, witnesses in the action to whom disclosure is
 25 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
 26 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
 27 Protected Material must be separately bound by the court reporter and may not be disclosed to
 28 anyone except as permitted under this Stipulated Protective Order.

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three (3) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material — and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

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10. FILING PROTECTED MATERIAL.

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party who seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION.

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days after the final termination of this action, each Receiving Party must return or destroy all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. The Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty (60) day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, the Parties are entitled to retain an archival copy of the case file even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

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Respectfully submitted,

Dated: April __, 2011

SCOTT COLE & ASSOCIATES, APC

By: /s/Molly A. DeSario
Molly A. DeSario, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class

Dated: April __, 2011

JACKSON LEWIS LLP

By: /s/ JoAnna L. Brooks
JoAnna L. Brooks
Attorneys for Defendant
The Equinox Group, Inc.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Sean Barnes vs. The Equinox Group, Inc., et al.* I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity, except in compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Based upon the foregoing Stipulation and good cause appearing,

IT IS SO ORDERED.

DATED: May 6, 2011



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